

## AST ENVIRONMENTAL COVENANT

This environmental covenant is established pursuant to Iowa Code chapter 455I entitled Uniform Environmental Covenants Act (*see also* 2005 Iowa Acts, Senate File 375).

*[INSERT Name(s) of fee title owners of affected property]*, hereafter "grantor(s)", and *[INSERT names of all holder(s)/grantee(s)]*, hereafter "holder(s)/grantee(s)", and the Iowa Department of Natural Resources (Department) in its capacity as an agency enter into this environmental covenant for the purpose of subjecting the property described below to certain activity and use limitations in accordance with the terms and conditions as specified and the authorities granted the Department in Iowa Code section 455B.103(7).

**1. Affected Property.** The grantor(s) identified below is the fee title owner(s) of the property located at *[INSERT ADDRESS]*. The property is legally described as:

Hereinafter, the affected property will be referred to as "the property."

**2. Risk Management and Institutional Controls.** This covenant addresses a petroleum release from an aboveground storage tank [AST] located at *[INSERT ADDRESS]*. The Department is applying the risk-based corrective principles for Underground Storage Tanks contained in 567 Iowa Administrative Code (I.A.C.) 135, including the use of Institutional Controls, to AST petroleum releases based upon its broad authority to address contaminated sites pursuant to 567 I.A.C. 133. As such, *[INSERT name of responsible party conducting Tier 1/2 assessment]* has conducted a soil and groundwater investigation and risk assessment (tiered site assessment) of the property in accordance with the rules in 567 I.A.C. 135.

*[ INSERT the following alternative paragraph, if the affected property is not an AST source property] – This covenant applies to a site affected by a petroleum release from an aboveground storage tank [AST] located at [insert address]. The persons associated with the AST site have requested the grantor execute this environmental covenant in order to satisfy regulatory requirements applicable to the AST site. The Department is applying the risk-based corrective principles for Underground Storage Tanks contained in 567 Iowa Administrative Code [I.A.C.] 135, including the use of Institutional Controls, to AST petroleum releases based upon its broad authority to address contaminated sites pursuant to 567 I.A.C. 133. As such, [INSERT name of the responsible party conducting the Tier 1/2 assessment] has conducted a soil and groundwater investigation and risk assessment (tiered site assessment) of the property in accordance with 567 I.A.C. 135.*

This assessment constitutes an environmental response project as defined in 2005 Iowa Code Supplement section 455I.2(5). Applying existing Department rules, this site assessment has identified soil or groundwater contaminant conditions on the property which may not pose an unreasonable risk to health, safety and the environment based on present land use, but may present an unreasonable risk to health, safety and the environment unless certain future land use activities are limited and enforced as specified in this agreement. The Department rules in chapter 567 I.A.C. 135 authorize the use of an environmental covenant as an institutional control. The purpose of this environmental covenant is to manage the risk of future exposure to existing contaminant conditions by limiting specified land use activities at this property, establishing affirmative obligations and enforcing the terms of this covenant.

*[INSERT the name of the parties requesting classification decision] wish to use this environmental covenant as an institutional control in order to obtain a No Action Required classification [INSERT or if appropriate low risk classification] for the site or designated exposure pathways*

**3. Tiered Assessment Reports.** *[If there is a File No. for the AST site, use this sentence – IF NOT DELTE] Department files reference the AST source site located at [insert AST site address] by [File No. or Registration No]. [INSERT by name, date and location of the appropriate Tier 1/2, SMR or other assessment report(s) which propose the risk classification and use of institutional controls and Department approval letters]*

**4. Reopening.** The signatories acknowledge that failure of the activity and use limitations to serve their intended purpose including the prevention of contamination exposure could result in the Department reopening its review and regulation of the contaminant condition on the property as provided under the terms of this covenant, Iowa Code chapters 455B and 455I, and applicable Department administrative rules.

**5. Identity of Grantor(s) and Holder(s).**

**GRANTOR(S):** *[INSERT name of each fee title holder]*

**HOLDERS:** *[INSERT each person signing the covenant as a holder and describe their relationship to the property. A grantor can be a holder as well. Other persons may include contract buyers, lessees, mortgage holders, municipalities, owners and operators of the AST site, other interested parties. [Note, the Department will typically sign as an “agency” and not a holder with an interest in the property, as provided in Iowa Code sections 455I.2(2) and 455I.3(d)(2)).]*

**AGENCY:** Iowa Department of Natural Resources

**6. Representations and Warranties.** The grantor(s) warrants to the other signatories to this covenant the following:

- a. The grantor[s] is/are the sole fee title owner[s] of the property;

- b. the grantor[s] holds sufficient fee title to the property to grant the rights and interests described in this covenant free of any conflicting legal and equitable claims;
- c. the grantor[s] has/have identified all other persons holding legal or equitable interests, including, but not limited to, contract buyers, mortgage holders, other consensual lienholders and lessees, and secured their consent either by signatures on this covenant or by a separate subordination and consent agreement attached as Exhibit [*INSERT Exhibit*]]. [*Consult Department guidance to assure that all contract buyers, mortgagees, lessees and other consensual lienholders either sign this instrument or sign a separate Department approved subordination and consent agreement*]

**7. Running with the Land.** This environmental covenant is perpetual and runs with the land as provided in Iowa Code section 455I.9 until modified or terminated. The terms of this environmental covenant are binding on the grantors and all successors in interest, assigns and all transferees acquiring or owning any right, title, lien or interest in the property and their heirs, successors, assigns, grantees, executors, administrators and devisees. The term "transferee," as used in this environmental covenant, shall mean any future owner of any interest in the property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders and/or lessees.

**8. Activity and Use Limitations and Terms.** The property is subject to the following activity and use limitations: [*INSERT and describe specific restrictions, affirmative obligations, provisions regarding notice to the Department of breaches of the terms, periodic reporting requirements and persons with specific duties with reference to any guidance and model language developed by the Department*]

[*INSERT any discretionary provisions applicable to designated signatories, future fee title owners, contract buyers, lessees and other designated transferees of interests in the property. This may include provisions to establish affirmative obligations to notify the Department regarding changes in use, building permits, etc.*]

**9. Notice of Non-Compliance.** Any property owner or subsequent transferee of an interest in the property shall notify the Department as soon as possible of conditions which would constitute a breach of the activity and use limitations in paragraph eight (8) if they have actual knowledge of these conditions or would reasonably be deemed to have knowledge within the normal course of administration of their property interest.

**10. Notice to Lessees.** Grantor, any holder with a property interest sufficient to grant a lease of the property and any subsequent transferee shall incorporate the activity and use limitations of this covenant either in full or by reference to this instrument in any lease, license, or other instrument granting a right to possession of the property.

**11. Access to Property.** Reasonable access to the property is granted the Department or any authorized representative of the Department, public or private, for the purpose of implementation, monitoring and enforcement of the terms of this environmental covenant. The Department, its authorized representatives or other persons entitled to access shall provide the current owner of the property with reasonable notice, an explanation of the reasons for entry and the scope of onsite activities prior to access. Right of access includes, but is not limited to, the following activities:

- a. repair and maintenance of remedial action equipment, soil caps, groundwater monitoring wells and associated aboveground or subsurface structures
- b. fencing and other technological controls.
- c. groundwater sampling and monitoring
- d. additional drilling
- e. construction of soil boring and/or groundwater monitoring wells
- f. other activities authorized or otherwise directed by the Department.

Access is also granted to *[INSERT name specific persons who are granted access rights]*. explanation of the reasons for entry and the scope of onsite activities prior to access.

**12. Groundwater Hazard Statement Notice.** Iowa Code section 558.69 requires submission of a groundwater hazard statement and disclosure if “hazardous waste” exists on the property as defined in Iowa Code subsections 455B.411(3), 455B.412(2) or section 455B.464 or if the Department determines that solid waste exists on the property that is potentially hazardous. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with Department rules. The signatories and all subsequent transferees required to submit a groundwater hazard statement under Iowa Code section 558.69 shall make reference to this environmental covenant in substantially the following form:

THE INTEREST CONVEYED IS SUBJECT TO AN  
ENVIRONMENTAL COVENANT, DATED *[INSERT date month, day,  
year]* RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE  
\_\_\_\_\_ COUNTY RECORDER ON *[INSERT date month, day,  
year]* IN *[INSERT document, book and page, or parcel number]*.

THE ENVIRONMENTAL COVENANT CONTAINS THE  
FOLLOWING ACTIVITY AND USE LIMITATIONS: *[INSERT  
language that describes the activity and use limitations exactly as it  
appears in the environmental covenant.]*

**NOTE:** do not insert the Activities & Use limitations here; it is only necessary to do so when you submit the groundwater hazard statement notice, which this section is simply a model of. DELETE THIS INFORMATIONAL “NOTE” BEFORE SUBMITTING THE ENVIRONMENT COVENANT FOR REVIEW.

**13. Modification and Termination.** Modification or termination of the terms of this covenant shall comply with the standards in Iowa Code chapter 455I and applicable

Department administrative rules. The terms of this environmental covenant may be modified or terminated by written consent of the Director of the Department, the then current fee simple title owner and all original signatories (unless exempted under the provisions of Iowa Code section 455I.10(1)“c” in accordance with and subject to the provisions of Iowa Code section 455I.10). The termination or modification is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any modification or termination of this environmental covenant shall be in accordance with Iowa Code section 455I.9 and such additional terms as specified in this covenant.

**14. Enforcement.** The terms of this environmental covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Iowa Code chapter 455I.11. *[INSERT DISCRETIONARY PARAGRAPH in addition to persons authorized to enforce this covenant pursuant to Iowa Code section 455I.11, the signatories to this covenant may grant the following person(s) power to enforce the terms of this covenant: INSERT name additional parties with enforcement power.]*

**15. Severability.** If any provision of this environmental covenant is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**16. Governing Law.** This environmental covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

**17. Recordation.** Within thirty (30) days after Department approval of this environmental covenant, the grantor[s] shall record the environmental covenant in the same manner as a deed to the property with the *[NAME]* County Recorder’s Office.

**18. Effective Date.** The effective date of this environmental covenant shall be the date upon which the fully executed environmental covenant has been properly recorded with the *[NAME]* County Recorder’s Office.

**19. Notice.** Unless otherwise notified in writing by the Department, any document or communication required by this environmental covenant shall be submitted to:

*[INSERT NAME OR ADDRESS]*  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 E 9<sup>th</sup> Street  
Des Moines, IA 50319

**20. Subordination and Consent.** By signing this environmental covenant, the signatories knowingly and intelligently acknowledge their consent to the terms of this agreement and agree to subordinate their interest in the property. The following persons have expressly consented and subordinated interests:

*[INSERT: Identify persons and entities who are consenting and subordinating their interests such as mortgagees and other consensual lienholders, lessees, etc. Identify the nature of the subordinated interest.]*

21. **DISCRETIONARY INSERT: Notice of Change in Ownership**. Grantor and holder with sufficient property interest to convey a possessory interest in the property and any subsequent transferee with sufficient interest shall reference and incorporate the terms of this agreement into any purchase agreement for sale of the property, assignment of an interest in the property or other instruments conveying an interest in the property and include specific contract terms requiring the buyer or assignee to incorporate the terms of this easement into successive conveyance instruments

## ACKNOWLEDGMENTS

*INSERT property acknowledgments in accordance with Iowa Code 558.20 and Iowa Code chapter 9E, and specific to individuals, partnerships, corporate entities, municipalities, State agencies and political subdivisions, etc.*

## GRANTORS

*[INSERT signature blocks and appropriate acknowledgements for all grantors]*

\_\_\_\_\_  
Notary Public, State of Iowa:

## HOLDERS:

*[INSERT signature blocks and appropriate acknowledgements for all holders]*

\_\_\_\_\_  
Notary Public, State of Iowa:

## AGENCY:

\_\_\_\_\_ Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
Chuck Gipp  
Director, Iowa Department of Natural Resources

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, known to me to be the Director of the Iowa Department of Natural Resources or the lawful designee of the Director who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

\_\_\_\_\_  
Notary Public for State of Iowa

## SUBORDINATED INTERESTS:

*[INSERT signature blocks and appropriate acknowledgements for all subordinated interests]*